

Banaras Hindu University, Varanasi and another

Vs

Indra Pratap Singh

Civil Appeal No.1626 of 1988

(L. M. Sharma, V. Ramaswami, B. P. Jeevan Reddy JJ)

24.01.1992

JUDGEMENT

B.P. JEEVAN REDDY, J.:-

1. This civil appeal is preferred against the judgment and order of a Division Bench of the Allahabad High Court allowing the writ petition filed by the respondent Dr. Indra Pratap Singh.
2. The respondent was appointed as a lecturer by the appellant-University, on temporary basis, on 26-8-1974 in the department of Basic Principles in the Institute of Medical Sciences. His appointment was effective for a period of eleven months. At the end of eleven months, he was reappointed on the same basis for a further period of eleven months. By means of such appointments, he was continued up to 31-3-1980. There was no reappointment thereafter. On 21-7-1980, the respondent was appointed as a Reader in Sri Ayurved College of the Nagpur University. He worked there till 20-9-1982. On 22-9-1982, he was appointed as a lecturer in the appellant-University in the very same department, on a permanent basis. On this occasion, his salary was fixed giving him as many as fourteen increments so as to protect his last drawn pay at Nagpur.
3. Banaras Hindu University is a central University. It is entirely founded by the University Grants Commission (U.G.C.). The U.G.C. had evolved a scheme called 'Merit Promotion Scheme' with a view to provide an incentive to teachers, to prevent stagnation and also to improve their efficiency. One of the conditions which a lecturer must satisfy before he becomes entitled to promotion is eight years'continuous service. Cl. (a) of para 2 of the Scheme which provides for the said qualification reads thus:

"2(a). Teacher in the University departments engaged in advance teaching and research and whose contribution and achievements are such as to merit recognition must be considered for merit promotion in the first instance after completing eight years of continuous service in their respective cadre, of which at least four years should be in the institution where he/she is being considered for such assessment and merit promotion."
4. On being selected under the Merit Promotion Scheme a lecturer is designated as Reader and becomes entitled to a higher pay scale. The selection under this scheme has to be made by the University concerned no doubt in accordance with the criteria evolved by the U. G. C.
5. The respondent applied for being selected under the said scheme in the year 1983. The University, however, was of the opinion that he is not eligible for being considered inasmuch as he

does not satisfy the requirement of eight years' continuous service in the cadre. The objection was that there was 'break in his service between 1-4-1980 and 20-7-1980 (both days inclusive) which means that his continuous service can be counted only from 21-7-1980. If so calculated, he does not satisfy the said requirement by the year 1983. Another objection raised by the University was that the service rendered by the respondent in the Nagpur University cannot be counted. The respondent's case, however, as not only that his service at Nagpur is liable to be counted but that the University was competent to and ought to condone such breaks in service and that indeed it has condoned such breaks in service in the case of other teachers. Refusal to do so in the case of respondent, it was submitted, was discriminatory and arbitrary.

6. In view of the stand taken by the University, the respondent approached the Allahabad High Court by way of Civil Miscellaneous Writ Petition No. 3396 of 1985: (reported in 1988 Lab IC 1191). At his instance the High Court made an interim order directing the University to place the petitioner's case before the Selection Committee (constituted for the purpose of selection under the said scheme). According to the counsel for the University, the respondent's case has accordingly been considered and the decision of the Selection Committee kept in a sealed cover. The matter has not yet been placed before the Executive Council of the University which is the final authority in the matter of selection under the scheme, says the counsel.

7. The High Court has allowed the writ petition on the following reasoning: a long standing practice in vogue in the University is to condone breaks in service in such cases. Refusal to condone the break in service in the case of the respondent, more so when he was given extra increments at the time of his permanent appointment as a lecturer in this University in the year 1982 (with a view to bring his salary on par with the salary he was drawing as a reader in the Nagpur University) is not justified. The service rendered by the respondent in the Nagpur University is also liable to be counted towards the eight years' continuous service. Indeed para 2(a) of the scheme expressly recognises service in more than one University. Inasmuch as the respondent's case has already been considered by the Selection Committee in pursuance of the interim orders, his case should now be placed before the Executive Council and if he is found suitable he should be entitled to promotion/selection under the scheme with effect from the same date from which other teachers of the University interviewed for the first round of promotion were appointed. The operative portion of the judgment reads thus [1988 Lab IC 1191, para 11]:

"In the result, the writ petition succeeds and is allowed. The orders of the University rejecting applications of the petitioner for condoning break in service and for being considered for merit promotion are quashed. The University is directed to place the recommendation of the Selection Committee before the Executive Council in its next meeting. It is further directed to appoint the petitioner on the post of Reader in the Department of Basic Principles in the Institute of Medical Sciences of the University, if he has been selected for promotion by the Selection Committee and its recommendation is approved by the Executive Council with effect from the same date from which other teachers of the University interviewed for first round of promotions were appointed. We direct the parties to bear their own costs."

8. The principal contention urged by the learned counsel for the petitioner-University is that the High Court was in error in holding that the respondent satisfied the requirement of eight years' continuous service. The counsel did not dispute the power of the University to condone short breaks in service, but such power, he said, was exercised in cases only where the delays in reappointment were caused by procedural delays in the office of the University. There has been no case, he

submitted, where the University condoned the break in service of the nature concerned herein. The respondent left this University, remained out of job for a period of three months 20 days and then was appointed as a Reader in the Nagpur University. This is a definite break in service and such a break has never been condoned by the University. The counsel, however, did not urge before us that the service rendered by the respondent in the Nagpur University should not count towards the eight years' qualifying service. On the other hand, the learned counsel for the respondent supported the judgment of the High Court on the following reasoning: Para 2(a) of the scheme recognises a teacher serving two or more Universities during the said period of eight years, the only requirement being that at least four years out of it should be in the institution where he is being considered for promotion/ selection under the said scheme; the requirement of eight years' continuous service must be reasonably understood having regard to the underlying aim and object; where a teacher serves two or more Universities during the said period, it can reasonably be presumed that there will be breaks in his service, whether the break is of a day, a week, a month or a couple of months. It is unlikely -ordinarily speaking - that a teacher gets re-employment in another University and joins there on the very next day of his being relieved from the first University. The object behind para 2(a) of this scheme is to ensure that a teacher does have eight years' teaching experience. Moreover, in the case of this very respondent there were gaps of about a week or so on every occasion he was reappointed prior to 1980; the University never treated them as breaks in service. Above all, at the time of his permanent appointment in the year 1982 he was given a large number of increments both in view of his past service in the University and also with a view to protect his last pay drawn in the University at Nagpur. In many other cases the University has condoned similar breaks of two to three months; refusal to do so in the case of the respondent is arbitrary and discriminatory.

9. We agree with the learned counsel for the respondent that the expression "eight years of continuous service" in para 2(a) of the scheme should be understood in a reasonable manner having regard to the underlying aim and object. Para 2(a) itself expressly recognises that the eight years, service may be in more than one institution, the only requirement being a minimum of four years' service in the institution where he is being considered for promotion under the scheme. In case of shift from one University to other or from one institution to the other - it can reasonably be presumed that there is bound to be some interval. The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be leaned, but its nature. We do not mean to say that length of such interval is totally irrelevant; what we mean, however, is that one must take into consideration the reason for which break - or the circumstances in which such break - has occurred. Another factor to taken into consideration in understanding be construing the said expression is the object underlying the said requirement. According to us, the object is to ensure eight years' teaching experience. It is true that there is a break of three months 20 days in the respondent's service and teaching experience. We also take note of the act that it was not the vacation time for academic institutions. But this circumstance must be weighed against a countervailing circumstance in favour of the respondent viz., his reappointment on a permanent basis in the very same department in the niversity in the year 1982. As stated above, he served as a temporary lecturer from 26-8-1974 till 31-3-1980. From 1-4-1980 to 20-7-1980 he remained without a job. On 21-7-1980 he was appointed as a Reader in the Nagpur University - in the very same subject - where he served till 20-9-1982. On 22-9-82 he was appointed as a permanent lecturer in this very University and, in the same category and subject. On this occasion, he was granted a good number of increments. The University says that these increments were granted with a view to protect his last pay drawn by him in the Nagpur Univesity while the respondent says that it was granted not only for the said purpose but also in the light of his past service in this University. It is true that he was not given seniority since 26-8-1974. Even so the question is whether the gap of

three months 20 days is such a long gap as not to merit condonation - or for that matter to be termed as a break in service for purposes of para 2(a) of the scheme.

10. In *Jeevan Lal Limited v. Its Workmen* (1962) 1 SCR 717: (AIR 1961 SC 1567), the expression "continuous service" fell for consideration of this Court. The employee joined the appellant's service as a workman in 1929 and resigned in 1957. During this period he remained absent from duty without permission or leave for nearly eight months between February, 1945 to October, 1945. Under an award made between the employer and the workmen, a scheme was framed wherein the concerned clause was that "on voluntary retirement or resignation of an employee after fifteen years continuous service, gratuity at the same rate as above" was payable. The question was whether the respondent-workman satisfied the requirement of 15 years, continuous service. Gajendragadkar, J. speaking for the Division Bench held in favour of the workmen on the following reasoning (Paras 4 and 6 of AIR):

"..... there can be no doubt that in a different context the same words can and often have different meanings. As this Court has observed in *Budge Budge Municipality v. P. R. Mukherjee* (AIR 1953 SC 58 at p. 60), "the same words may mean one thing in one context and another in different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful but cannot be taken as guides or precedents"..... "Continuous service" in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If an employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service."

11. This decision does emphasise the fact that the said expression has no single unalterable meaning and that its content varies having regard to the context.

12. In "Words and Phrases" Vol. 9, the word "continuous employment" is assigned the following meaning:

"It means working with reasonable regularity, and work does not cease to be "continuous" because of interruptions in occupation due to periods of temporary illness, such as are incident to people of normal health. "Continuously" as used in regulations defining total permanent disability under war risk policy does not denote absolute continuity."

13. Again, the word "continuous service" is given the following meaning:

"Phrase "continuous service", as contained in collective bargaining agreement had to be viewed in light of terms of agreement which provided for work schedule of eight hours per day for a five-day week, Monday to Friday, inclusive and, therefore, one working regular prescribed hours of labour would be rendering "continuous service"

within agreement even though not working on Saturdays or Sundays or more than eight hours in any 24."

14. The above two meanings, among the several set out therein are in our opinion contextually relevant. We are also of the view that a literal interpretation of the said words is ruled out by the context, as the preceding discussion shows.

15. The counsel for the University has conceded that on several occasions prior to 31-3-1980, there were gaps of a week or so in,, issuing reappointment order on temporary basis. He says that these delays were in the nature of ministerial delays and, therefore, they were condoned but so far as the gap between 1-4-1980 and 20-7-1980 is concerned he says it is of an altogether different nature inasmuch as the respondent left this University and joined another University. But as we have stated hereinbefore, para 2(a) itself expressly recognises the said eight years service having been put in more than one University. The present gap is of that nature. True it is that it is a bit too long but even so in the light of the circumstance that the respondent was reappointed on a permanent basis, on the very same post, in the very same department, the length of the said break pales into insignificance. We are persuaded to believe that the said increments must have been granted taking into account his past service for a period of six years in this University as well.

16. The respondent has brought to our notice several instances where the University has condoned breaks of two months or more in the case of other teachers. We do not, however, think it necessary to examine those cases except two. One Dr. L. K. Pande was a teacher in the department of Ob. and Gyn. in the Institute of Medical Sciences of this University. He was appointed temporarily on 26-5-1973 and resigned on 5-2-1975. He was said to be out of job between 5-2-1975 and 27-4-1975 (for a period of two months 22 days). He was reappointed as a lecturer in this University on temporary basis on 28-4-1975, and on a permanent basis on 16-10-1978. The respondent's case is that the University has condoned the said gap of two months 22 days in his case and if so there is no reason why the gap of three months 20 days, in the case of respondent should not be condoned. The University has, however, explained in its counter-affidavit that no such condonation was made in his case and that his service was counted only from 28-4-1975. But if his service is counted from 28-4-1975 only, it is significant to notice, he does not complete eight years service by 15-1-1983 which was the last day of applying - vide University proceeding dated 11 / 21 December, 1982. The other case is of Dr. A. M. Tripathi who was a teacher in the department of paediatrics in the Institute of Medical Sciences of this University. He was appointed temporarily on 11-5-1974. According to the respondent, he resigned on 12-8-1975 and was out of job till 24-8-1975 when he went to Kabul. According to him, he served at Kabul in a non-teaching capacity from 25-8-1975 to 8-4-1976 and he was reappointed as a lecturer in this University on temporary basis on 9-4-1976 and made permanent on 9-2-1979. The respondent says that the entire gap between 12-8-1975 to 8-4-1976 was condoned by the University for considering his case under the scheme. The appellant's case, however, is different. According to the appellant-University, he was sent to Kabul on deputation and that the break in his service occurring prior to his going to Kabul has never been condoned. We find that in the rejoinder-affidavit of the University filed in this Court, there is a certain mix-up of the relevant dates in the case of these two teachers. Be that as it may, its case appears to be that services of these two teachers were counted only from the date of their re-employment. Then the following significant statement occurs in the rejoinder-affidavit filed in this Court:

"It is true that by 15-1-1983 he had not completed 8 years of continuous service in the same cadre. However, in the meanwhile the Vice-Chancellor as also the Executive Council decided that eligibility period of candidature for appointment to

teaching posts under Merit Promotion Scheme be counted as on the date of interview, as per existing practice for regular appointments in view of the fact that the Executive Council treats posts in both categories on a par with each other. Accordingly since Dr. Tripathi had completed 8 years of continuous service in the same cadre by the date of interview on 23-6-83, he was eligible and was selected by the statutory Selection Committee. Applying the very same principle which was approved by the Executive Council, Dr. L. K. Pandey became eligible and was selected."

17. In our opinion, the above statement in the rejoinder-affidavit filed by the University is very revealing. It shows that even though the said two teachers had not completed eight years' service by the prescribed date i.e. by 15-1-1983, the Vice-Chancellor and the Executive Council decided to extend the eligibility period till the date of interview so as to make them eligible for consideration. We are not suggesting any mala fides or any unreasonable conduct to the University. All that we are saying is that the University has been passing appropriate orders wherever the justice of a case demanded. In our opinion, the same treatment ought to have been extended to the respondent, in all the circumstances of the case.

18. For the above reasons, the appeal fails and is accordingly dismissed. No orders as to costs.

Appeal dismissed.

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